



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: August 13, 1997

SUBJECT: MUR 3774-General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

72 Hour Tally Vote ☐
Sensitive ☐
Non-Sensitive ☐

24 Hour Tally Vote ☒
Sensitive ☒
Non-Sensitive ☐

24 Hour No Objection ☐
Sensitive ☐
Non-Sensitive ☐

Information ☐
Sensitive ☐
Non-Sensitive ☐

Other ☐

DISTRIBUTION

Compliance ☒

Audit Matters ☐

Litigation ☐

Closed Letters ☐

MUR ☐

DSP ☐

Status Sheets ☐

Advisory Opinions ☐

Other - (See Distribution below) ☐



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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FEDERAL ELECTION
COMMISSION
AUG 13 1997

AUG 13 10 48 AM '97

SENSITIVE

August 12, 1997

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner *LL*
Associate General Counsel

SUBJECT: Shorter Voting Deadline for General Counsel's Report in MUR 3774

Pursuant to the Circulated Vote Provisions of Directive 52, the Office of General Counsel is circulating the attached General Counsel's Report on a 24 hour tally vote basis so that, if necessary, any discussion of the report can take place at the Commission's August 19, 1997 Executive Session.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Minnesota Citizens Concerned for Life, Inc.) MUR 3774
Minnesota Citizens Concerned for Life Committee)
for a Pro-Life Congress)
National Right to Life Committee, et al.)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves a complaint generated matter filed by the Democratic Senatorial Campaign Committee ("DSCC") alleging that the National Republican Senatorial Committee ("NRSC") violated the Federal Election Campaign Act and Commission regulations by funneling \$847,000 in non-federal funds to non-profit organizations in order to influence certain U.S. Senate elections in 1992, 1993 and 1994.¹

On August 1, 1995, the Commission found reason to believe, inter alia, that the NRSC violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i) and that the recipient non-profit organizations, including the National Right to Life Committee, Inc. ("NRLC") violated 2 U.S.C. § 441b(a). Based on disclosure reports appended to the complaint, the Commission also found reason to believe that Minnesota Citizens Concerned for Life Committee, Inc. ("MCCL") and its separate segregated fund,

¹ The specific Senate races named in the complaint and identified through discovery include the 1992 U.S. Senate general election runoff in Georgia, the 1993 U.S. Senate special and runoff elections in Texas and the 1994 U.S. Senate elections in Pennsylvania and Minnesota elections.

Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC") violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a) by apparently using funds from MCCL's general account to pay for independent expenditure costs for phone calls that were later reimbursed by MCCL PAC. The complaint suggested that the funds advanced by MCCL for the independent expenditure costs came from the NRSC via the NRLC. On the same day as its reason to believe findings, the Commission approved subpoenas and orders to be sent to, among others, the NRLC.

NRLC's initial subpoena responses revealed that NRLC gave \$50,000 to MCCL, Inc. for phone calls on November 4, 1994, the same day it received the last of four non-federal payments from the NRSC totaling \$175,000. Consequently, on February 4, 1997, the Commission approved additional, follow-up subpoenas and orders to, inter alia, the NRLC, MCCL and MCCL PAC, and the Southern Education Council, Inc. ("S, Inc."), a telemarketing firm that may have conducted GOTV phone calls for MCCL aimed at specific U.S. Senate elections, calls that were financed by funds that MCCL received from NRSC via NRLC.

As discussed below, this report recommends that the Commission approve additional subpoenas and orders in an effort to obtain relevant bank records of MCCL and information from various vendors concerning GOTV telemarketing campaigns financed by MCCL, MCCL PAC and NRLC following receipt of NRSC's non-federal payments.

II. ANALYSIS

A. MCCL Bank Records

The February 1997 subpoena and order sent to MCCL sought, inter alia, records of the MCCL bank account into which NRLC's \$50,000 payment was deposited, and of any other accounts into which portions of that payment may have been transferred. On April 16, 1997, MCCL filed a response which objected to the production of bank records. In addition to providing no legitimate basis for its objection, MCCL's response was insufficient in several other ways. In light of the difficulty encountered in obtaining sufficient subpoena/order responses from counsel for NRLC, who also represents MCCL and MCCL PAC, the Office of General Counsel sought contingent suit authorization to enforce the subpoenas for documents and orders to submit written answers against MCCL and MCCL PAC. On May 20, 1997, the Commission authorized this Office to file a civil action to enforce the subpoenas and orders issued to MCCL and MCCL PAC, if they should fail to comply voluntarily.

After numerous written and oral follow-up requests, MCCL and MCCL PAC produced some of the documents missing from their responses to the February 1997 Commission subpoenas/orders on July 3 and July 10. However, counsel repeatedly stated that he had to speak to his client about producing MCCL's bank records. (See Attachment 1). It was not until depositions of MCCL personnel had been scheduled for early August that counsel orally stated to Office of General Counsel staff, during a document review at NRLC offices, that MCCL would not be producing the requested bank records. According to counsel, these records are "irrelevant" to the investigation.

Consequently, the MCCL/MCCL PAC depositions have been temporarily postponed pending receipt of the bank information needed to support the deposition process.

In order to preserve the litigation resources of the Commission, this Office proposes seeking MCCL's bank records through a bank subpoena rather than filing a subpoena enforcement action at this time. We are also hopeful that a bank subpoena will be quicker than a subpoena enforcement action since the notification requirements of The Right to Financial Privacy Act of 1978 do not apply to MCCL, Inc.² Checks produced during discovery indicate that MCCL's relevant bank accounts appear to be held at the Richmond Bank and Trust Company of Richfield, Minnesota. Accordingly, this Office recommends that the Commission approve the attached Subpoena to Produce Documents/Order to Submit Written Answers to Richmond Bank. (Attachment 2).

B. Vendors: Southern Education Council, Inc., Optima Direct, Inc.

The February 1997 subpoena and order to SEC, Inc. sought to determine who financed last-minute GOTV phone campaigns conducted by SEC, Inc. which were aimed at the U.S. Senate elections in Minnesota, Pennsylvania, Michigan and Tennessee. According to published accounts, SEC Inc.'s GOTV phone calls referenced the candidates' positions on various abortion issues and occurred around the time of NRSC's payments to NRLC.

In its initial response to the subpoena/order SEC Inc.'s denied having any records relating to the phone calls, but failed to address whether any of its officers and employees

² Because it is neither an individual nor a partnership entity of less than five individuals, MCCL does not meet the definition of "customer" as defined by The Right to Financial Privacy Act of 1978. See 12 U.S.C. § 3401 and Ridgeley v. Merchants State Bank, 688 F. Supp. 100 (N.D. Tex. 1988).

had knowledge of the phone calls. (Attachment 3 at 1-2). After several follow-up requests, SEC Inc. eventually acknowledged that it conducted phone calls relating to the U.S. Senate race in Minnesota and possibly other states, pursuant to a subcontract between an SEC, Inc.- related entity, Civic Development Group, Inc. and Optima Direct, Inc. However, SEC, Inc., provided little documentation and pointed to Optima Direct as the primary source for information concerning the client(s) on whose behalf the calls were made, the states in which calls were made, the scripts and lists used and the dates of the original contract and of the subcontracts. (Attachment 3 at 6-11).

The NRLC, MCCL, and MCCL PAC all produced some documentation showing that Optima Direct was one of the vendors used to make GOTV phone calls on their behalf in connection with the 1994 Minnesota and Pennsylvania U.S. Senate races. Several invoices and payments referenced in the Optima Direct documents provided by NRLC and MCCL have not been produced, however. Moreover, it is unclear from the documentation provided, and from deposition testimony of NRLC personnel, whether the Optima Direct contract produced by NRLC pertains to the Minnesota and Pennsylvania GOTV phone calls. Finally, a review of disclosure reports filed by the 1994 Senate races mentioned in published accounts concerning SEC, Inc.'s campaign reveals that Rod Grams' and Spence Abraham's principal campaign committees were also using Optima Direct for telemarketing services at the same time Optima Direct was conducting GOTV phone calls for NRLC, MCCL and MCCL PAC. Accordingly, this Office recommends that the Commission approve the attached Subpoena and Order to Optima Direct seeking information and documents relating to Optima Direct's subcontract with SEC, Inc., and to

Optima's telemarketing campaigns conducted on behalf of MCCL, MCCL PAC, NRLC, the Rod Grams for Senate Campaign, and Abraham for Senate in 1994. (Attachment 4).

C. Vendors: Omega Communications, Inc., MDS Communications Corp.

In addition to Optima, two other vendors conducted GOTV phone calls for NRLC aimed at the U.S. Senate race in Pennsylvania: Omega Communications, Inc., and MDS Communications Corp. As with Optima, the documentation provided by NRLC relating to these vendors is minimal and NRLC personnel deposed were unable to recall the details relating to these telemarketing campaigns. Consequently, this Office recommends that the Commission approve the attached Subpoenas and Orders to Omega Communications, Inc., and MDS Communications Corp. to obtain any existing documentation relating to the telemarketing campaigns conducted by them on behalf of NRLC. (Attachments 5 and 6).

III. RECOMMENDATIONS

1. Authorize the attached Subpoena for Documents to be sent to the Richfield Bank and Trust Company of Richfield, Minnesota.
2. Authorize the attached Subpoenas for Documents and Orders to Submit Written Answers to be sent to Optima Direct, Inc., MDS Communications Corp. and Omega Communications, Inc.
3. Approve the appropriate letters.

8/12/97
Date

Lawrence M Noble (702)
Lawrence M Noble
General Counsel

Attachments

1. July 23, 1997 letter to James Bopp re: MCCL/MCCL PAC responses
2. Subpoena to Richfield Bank and Trust Company

3. SEC, Inc. responses to February 1997 subpoena/order
4. Subpoena/Order to Optima Direct, Inc.
5. Subpoena/Order to Omega Communications, Inc.
6. Subpoena/Order to MDS Communications Corp.

Staff Assigned: Dawn M. Odrowski
Anne Weissenborn
Jose Rodriguez

2004-03-23 14:23:23



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: AUGUST 14, 1997

SUBJECT: MUR 3774 - GENERAL COUNSEL'S REPORT

A handwritten signature, likely of Marjorie W. Emons or Bonnie Ross, is written over the "FROM" line of the memorandum.

The above-captioned document was circulated to the Commission
on Wednesday, August 13, 1997.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	—

This matter will be placed on the meeting agenda for
Tuesday, August 19, 1997.

Please notify us who will represent your Division before the Commission on this matter.